IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

SUMMONS FOR JUDGMENT NO.3 OF 2006

IN

SUIT NO.3056 of 2005

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The Bombay Engineering Works ...Plaintiff

v/s.

Calyx Pharmaceuticals &

Chemicals Pvt.Ltd. ...Defendant

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Ms.Sharmila Deshmukh for the Plaintiff.

Mr.R.D.Soni i/b Vivek Sharma for the Defendant.

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CORAM: D.K.DESHMUKH, J.

DATED: 6TH JUNE, 2006

P.C.:

The Plaintiff has filed this suit for recovery of price of machinery, which has admittedly been supplied by the Plaintiff to the Defendant. Machinery was installed in September, 2002. Perusal of the record shows that the Defendant has been pointing out defects in the machinery from the very beginning. Some of the defects are rectified by the Plaintiff. According to the Defendant some defects still remain. The submission of the Plaintiff is that the machinery as such was not defective, the defects that were pointed out by the Defendant were of minor nature.

2. In my opinion, whether the defects which were pointed out by the Defendant were essentially of the machinery or they were ancillary cannot be decided in the summary jurisdiction of the court. For that purpose the parties will have to lead oral and documentary evidence.

3. In this view of the matter, therefore, the suit cannot be decreed in the summary jurisdiction. Summons for judgment is, therefore, disposed of. Defendant is granted leave to defend the suit. Written statement to be filed within eight weeks from

today. Suit be transferred to commercial cause list.

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